

Electronically filed October 9, 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent of:	Catherine Lin-Hindel	Confirmation No.:	8086
Patent No.:	7,574,381	Serial No.:	09/631,238
Issued Date:	August 11, 2009	Filed:	August 2, 2009
For:	<i>System and Method for Constructing and Displaying Active Virtual Reality Cyber Malls, Show Rooms, Galleries, Stores, Museums, and Objects Within</i>	Attorney Docket No.:	101156-5007-US
		Date:	October 9, 2009

PETITION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(d)

In response to the issuance of the above referenced patent dated August 11, 2009, Applicants submit this petition for patent term adjustment ("PTA") to request a reconsideration of PTA of 1492 days.

For consideration of the petition for PTA, enclosed are the following:

1. Fee set forth under 37 C.F.R. § 1.18(e);
2. Statement of the Facts involved under 37 C.F.R. § 1.705(b)(2); and
3. Annotated Copy of Patent Term Adjustment History.

In view of the reasons set forth in the Statement of Facts, the Patentees respectfully request that the patent term be corrected by adding 380 additional days to the term of the patent issuing from the above-identified application for a total of 1872 days.

I. STATEMENT OF FACTS

A. Statement Under 37 C.F.R. 1.705(d)

This statement is respectfully submitted in support of the “Petition For Patent Term Adjustment Under 37 C.F.R. § 1.705(d)” for the above-referenced patent.

It is respectfully submitted that this request for reconsideration of the patent term adjustment under 37 C.F.R. § 1.705(d) is timely as it is filed within two months of the issue date of August 11, 2009. The issues raised in this request for consideration could not have been raised earlier, under 37 C.F.R. § 1.705(b), because they involve delays under 35 U.S.C. § 154(b)(1)(B) and 37 C.F.R. § 1.702(b) which are calculated based on the issuance date of the patent. Petitions for a request for reconsideration under 37 C.F.R. § 1.705(b), must be filed prior to the payment of the issue fee, and therefore cannot include calculations based on the issuance date. For the above cited reasons, this petition under 37 C.F.R. § 1.705(d) is timely and the issues it raises could not have been raised earlier.

B. Wyeth v. Dudas

The District Court for the District of Columbia issued a recent decision on PTA in the case of *Wyeth v. Dudas*, 580 F.Supp.2d 138 (D.D.C. 2008). In *Wyeth*, the Court ruled that patent applicants are entitled to term adjustments for Patent Office delay both under the provision that a patent shall issue within three years of the filing date as well as in instances of further Patent Office delay, such as in issuing a first Office Action, so long as both did not occur on the same calendar day. *Id.* at 142. In other words, as long as the “Period A delays”¹ and “Period B delays”² do not occur on the same calendar day, according to the *Wyeth* decision, the “Period A delays” and the “Period B delays” should be added together.

The Patent Term Adjustment (“PTA”) under 35 U.S.C. § 154(b) listed on the above-referenced patent is 1492 days (a copy of the patent term adjustment calculations is submitted herewith in Appendix A). This determination is in error in that pursuant to 35 U.S.C. § 154(b), the Patent Office failed to take act within the time frame specified in 35 U.S.C. § 154(b)(1)(A) and 37 C.F.R. § 1.702(a) (“Period A” delay) and failed to issue a patent within three years of the actual filing date of the above-referenced application in accordance with 35 U.S.C. § 154(b)(1)(B) and 37 C.F.R. § 1.702(b) (“Period B” delay).

¹ Period A delays are those defined by 35 U.S.C. § 154(b)(1)(A) and 37 C.F.R. § 1.702(a).

² Period B delays are those defined by 35 U.S.C. § 154(b)(1)(B) and 37 C.F.R. § 1.702(b).

C. Period B Delays

Pursuant to 35 U.S.C. § 154(b)(1)(B) and 37 C.F.R. § 1.703(b), the Patentees are entitled to a period of PTA for failure of the Patent Office to issue a patent within three years of filing the application.

Under 35 U.S.C. § 154(b)(1)(B) and 37 C.F.R. § 1.703(b), the Patent Office should have issued the patent on August 2, 2003 (three years after filing of the application on August 2, 2000). The actual issuance was not until August 11, 2009, almost nine years after the initial filing.

However, the Patentees acknowledge that, under 35 U.S.C. § 154(b)(1)(B)(i) and 37 C.F.R. § 1.703 (b)(1), Period B delays do not include the period beginning when a request for continued examination was filed and ending on the date the patent was issued. In this instance, a request for continued examination was filed on January 14, 2008 and the patent issued on August 11, 2009. Therefore, the Period B delay is the time between the three year guarantee date (August 2, 2003) and the date of filing the request for continued examination (January 14, 2008) and which is a total of 1626 Period B delays.

Period B Delay: (August 2, 2003) to (January 14, 2008) = 1626 days

D. Relevant Period A Delays

Pursuant to 35 U.S.C. § 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), the Patentees are entitled to a period of PTA for failure of the Patent Office to comply with statutory deadline of issuing a first office action within fourteen months of the filing of the application.

Under 35 U.S.C. § 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), the Patent Office should have issued a first Office Action by October 2, 2001 (within fourteen months of filing the application on August 2, 2000). The Patent Office mailed a first Office Action on September 5, 2002. The Patent Office has properly accounted for this delay of 338 days of Period A delays. (*See* attached PTA calculation).

Relevant Period A Delay: (October 2, 2001) to (September 5, 2002) = 338 days

E. Period A and Period B do not overlap

The Patentees submit that the two periods discussed above are not overlapping. The Period A delay of 338 days for the Patent Office's failure to issue an Office Action within fourteen months of filing the application occurred between October 2, 2001 and September 5, 2002. The Period B delay of 1626 days for the Patent Office's failure to issue the patent within three years of filing under 35 U.S.C. §

154(b)(1)(B) (not including the RCE time) occurred between August 2, 2003 and January 14, 2008. The Period A delays ended on September 5, 2002 while Period B delays did not begin until August 2, 2003, so the Period A delays and Period B delays do not occur on the same calendar days.

F. Reduction of Patent Term Adjustment for the Patentees' Delays

The Patentees acknowledge that according to 37 C.F.R. § 1.703(f) (referencing 37 C.F.R. § 1.704) periods of delay caused by the Patent Office in which the applicant “failed to engage in reasonable efforts to conclude processing or examination” are also removed from the PTA calculation. The Patentees and the Patent Office are in agreement that the Patentees did not delay during the Period A delay (October 2, 2001 to September 5, 2002). The Patentees also do not contest the Patent Office’s determination that during the Period B delay timeframe (August 2, 2003 to January 14, 2008) the Patentees delayed for a period of 39 days, a period of 30 days, and a period of 23 days. (See attached PTA calculation). Therefore, the total patent term adjustment should be reduced by the Patentees’ delay of 92 days.

G. Total Patent Term Adjustment Calculation

Under the *Wyeth* decision, to the extent the “Period A delays” and the “Period B delays” do not occur on the same calendar day, the total patent term adjustment is equal to Period A delays plus Period B adjusted by the Patentees’ own delays. Accordingly, the Patentees submit that the correct PTA is the 338 Period A days added to the 1626 Period B days, lessened by Patentees’ delay of 92 days, which is a total of 1872 days.


Total Patent Term Adjustment: (338 Period A days) + (1626 Period B days) – (92 Applicant delay days)
= 1872 days of Patent Term Adjustment

The Patentees therefore respectfully submit, that the correct Patent Term Adjustment under the *Wyeth v. Dudas* decision for the above-referenced patent is 1872 days.

In view of the foregoing, it is respectfully requested that this Petition for Patent Term Adjustment Under 37 C.F.R. § 1.705(d) be favorably considered and that a corrected determination of Patent Term Adjustment be issued to reflect a PTA of 1872 days.

Respectfully submitted,

Date: October 9, 2009



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APPENDIX A

09/631,238	SYSTEM AND METHOD FOR CONSTRUCTING AND DISPLAYING ACTIVE VIRTUAL REALITY CYBER MALLS, SHOW ROOMS, GALLERIES, STORES, MUSEUMS, AND OBJECTS WITHIN	10-09-2009::13:15:14
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 09/631,238

Filing or 371(c) Date:	08-02-2000	USPTO Delay (PTO) Delay (days):	1748
Issue Date of Patent:	08-11-2009	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	256
Post-Issue Petitions (days):	+0	Total PTA (days):	1492
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History


Date	Contents Description	PTO(Days)	APPL(Days)
07-22-2009	PTA 36 Months		
08-11-2009	Patent Issue Date Used in PTA Calculation		
07-08-2009	Dispatch to FDC		
07-06-2009	Application Is Considered Ready for Issue		
07-02-2009	Issue Fee Payment Verified		
07-01-2009	Workflow - Drawings Finished		42
07-02-2009	Issue Fee Payment Received		↑
05-04-2009	Miscellaneous Incoming Letter		58
04-22-2009	Receipt into Pubs		↑
04-03-2009	Mail Notice of Allowance		↑
03-31-2009	Document Verification		↑
03-31-2009	Notice of Allowance Data Verification Completed		↑
03-29-2009	Examiner's Amendment Communication		↑
03-25-2009	Examiner Interview Summary Record (PTOL - 413)		↑
01-23-2009	Change in Power of Attorney (May Include Associate POA)		↑
01-22-2009	Date Forwarded to Examiner		↑
01-22-2009	Date Forwarded to Examiner		↑
12-29-2008	Request for Continued Examination (RCE)		62
01-22-2009	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		↑
12-29-2008	Request for Extension of Time - Granted		↑
01-22-2009	Correspondence Address Change		↑
12-29-2008	Workflow - Request for RCE - Begin		↑
11-21-2008	Mail Pre-Exam Notice		↑
10-13-2008	Case Docketed to Examiner in GAU		↑
09-05-2008	Case Docketed to Examiner in GAU		↑
07-28-2008	Mail Final Rejection (PTOL - 326)		↑
07-21-2008	Final Rejection		
05-06-2008	Date Forwarded to Examiner		
04-17-2008	Response after Non-Final Action		
03-07-2008	Case Docketed to Examiner in GAU		

	01-29-2008	Mail Non-Final Rejection		
	01-28-2008	Non-Final Rejection		
	01-24-2008	Date Forwarded to Examiner		
	01-24-2008	Date Forwarded to Examiner		
	01-14-2008	<u>Request for Continued Examination (RCE)</u>		2
	01-24-2008	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		↑
	01-14-2008	Workflow - Request for RCE - Begin		↑
	10-12-2007	Mail Final Rejection (PTOL - 326)		↑
	10-10-2007	Final Rejection		
	08-15-2007	New or Additional Drawing Filed		
	08-21-2007	Date Forwarded to Examiner		
	08-15-2007	Response after Non-Final Action		23
	07-25-2007	IFW TSS Processing by Tech Center Complete		↑
	07-25-2007	Mail Notice of Informal or Non-Responsive Amendment		↑
	07-23-2007	New or Additional Drawing Filed		↑
	07-25-2007	Date Forwarded to Examiner		↑
	07-23-2007	Informal or Non-Responsive Amendment after Examiner Action		↑
	07-23-2007	Response after Non-Final Action		30
	07-23-2007	Request for Extension of Time - Granted		↑
	07-19-2007	Correspondence Address Change		↑
	06-21-2007	Correspondence Address Change		↑
	06-21-2007	Correspondence Address Change		↑
	03-23-2007	Mail Non-Final Rejection	1410	
	03-21-2007	Non-Final Rejection	↑	
	02-21-2007	Date Forwarded to Examiner	↑	
	01-13-2003	Response after Non-Final Action		39
	02-22-2007	Mail Notice of Rescinded Abandonment		↑
	02-21-2007	Notice of Rescinded Abandonment in TCs		↑
	02-07-2007	Mail-Petition to Revive Application - Granted		↑
	11-28-2005	Petition Entered		↑
	05-27-2004	Mail-Petition Decision - Dismissed		↑
	02-17-2004	Petition Entered		↑
	10-31-2003	Mail-Petition Decision - Denied		↑
	05-23-2003	Petition Entered		↑
	05-06-2003	Mail Abandonment for Failure to Respond to Office Action		↑
	05-05-2003	Abandonment for Failure to Respond to Office Action		↑
	04-30-2003	Examiner Interview Summary Record (PTOL - 413)		↑
	01-13-2003	Incoming Letter Pertaining to the Drawings		↑
	01-13-2003	Substitute Specification Filed		↑
	01-13-2003	Untimely (Late) Amendment Filed		↑

Period B Delay

8-2-03
(3 yr date)

Uncontested Applicant Delay



09-05-2002	Mail Non-Final Rejection	338
09-03-2002	Non-Final Rejection	↑
08-21-2002	Case Docketed to Examiner in GAU	↑
04-23-2002	Case Docketed to Examiner in GAU	↑
03-05-2002	Case Docketed to Examiner in GAU	↑
11-06-2001	Case Docketed to Examiner in GAU	↑
10-23-2000	Case Docketed to Examiner in GAU	↑
07-14-2001	Case Docketed to Examiner in GAU	↑
10-23-2000	Case Docketed to Examiner in GAU	↑
10-12-2000	Application Dispatched from OIPE	↑
09-13-2000	Correspondence Address Change	↑
08-29-2000	IFW Scan & PACR Auto Security Review	↑
08-02-2000	Initial Exam Team nn	↑

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